

**ASSEMBLY BILL**

**No. 2144**

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**Introduced by Assembly Member Gilmore**

February 18, 2010

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An act to amend Sections 1803.5, 1808.7, 13353.2, 15200, 15300, 15302, 15311, 15311.1, 15312, 22526, and 41501 of the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

AB 2144, as introduced, Gilmore. Commercial motor vehicles: driver compliance.

(1) Existing law authorizes a court to order a person issued a notice to appear for a traffic violation to attend a traffic violator school licensed under certain provisions of the Vehicle Code, in lieu of adjudicating the traffic offense, and with the consent of the defendant, or after conviction of a traffic offense. A court may order a continuance against a person who receives a notice to appear in court for a violation of a statute relating to the safe operation of a vehicle, in consideration for attendance at a licensed school for traffic violators, a licensed driving school, or any other court-approved program of driving instruction. After that attendance, the court may dismiss the complaint and the record of the Department of Motor Vehicles relating to this proceeding and dismissal of the complaint is confidential.

This bill would delete all references to “complaint” and instead substitute a “traffic violator school conviction” for dismissal of the complaint and would provide that the department’s record of a traffic violator school conviction is not confidential if either of 2 conditions applies.

(2) Existing law declares the intent of the Legislature to adopt those standards required of drivers by the Federal Highway Administration of the Department of Transportation, as set forth in the Commercial Motor Vehicle Safety Act of 1986 and to reduce or prevent commercial motor vehicle accidents, fatalities, and injuries by permitting drivers to hold only one license, disqualifying drivers for certain criminal offenses and serious traffic violations, and strengthening licensing and testing standards.

Existing law prohibits a driver of a commercial motor vehicle from operating a commercial motor vehicle for a period of one year if the driver is convicted of a first violation of, or for the rest of his or her life if convicted of more than one violation of, specified offenses.

This bill would update references to federal law and make technical, nonsubstantive changes to these provisions.

(3) Existing law prohibits a driver from operating a commercial motor vehicle for a period of 90 days, 180 days, one year, or 3 years if the person is convicted of a specified violation of an out-of-service order issued by an authorized employee of the Department of the California Highway Patrol or by a uniformed peace officer. A violation of these provisions is a crime.

This bill would increase the disqualification period of 90 days to 180 days, the 180-day period to 2 years, and the one year period to 2 years. The bill would also expand this prohibition to include out-of-service orders issued by the Secretary of the United States Department of Transportation or a peace officer or commercial vehicle inspector of any state, any province of Canada, the federal government of the United States, or Mexico. By expanding the scope of an existing crime, the bill would create a state-mandated local program.

(4) Existing law provides that a driver who is convicted of violating an out-of-service order is subject to a civil penalty of not less than \$1,100 nor more than \$2,750. Existing law also provides that an employer that knowingly allows or requires an employee to operate a commercial motor vehicle in violation of an out-of-service order is, upon conviction, subject to a civil penalty of not less than \$2,750 nor more than \$11,000.

This bill would increase the penalty for the driver to not less than \$2,500 for a first conviction and to \$5,000 for a second or subsequent conviction. The bill would increase the upper limit of the penalty for an employer to not more than \$25,000.

(5) Existing law requires the Department of Motor Vehicles to immediately suspend the privilege of a person to operate a motor vehicle for any one of specified reasons, including, among other things, that the person was driving a vehicle that requires a commercial driver's license when the person had 0.04% or more, by weight, of alcohol in his or her blood.

Under existing law, if a person is acquitted of criminal charges relating to a determination of facts under the above provisions, or if the person's driver's license was suspended pursuant to a failure to complete or take a chemical test and the Department of Motor Vehicles found no basis for a suspension, the department is required to immediately reinstate the person's privilege to operate a motor vehicle if the department has suspended it administratively pursuant to the above provisions, and to return or reissue for the remaining term any driver's license that has been taken from the person pursuant to those provisions.

This bill would prohibit the reinstatement of the person's privilege to operate a motor vehicle if the driver was operating a commercial vehicle, as defined, at the time of the stop or the person held a commercial driver's license at the time of the stop, regardless of whether the vehicle operated at the time of the stop was a commercial vehicle.

(6) Existing law prohibits a driver of a vehicle from entering a railroad or rail transit crossing, notwithstanding any official traffic control device or signal indication to proceed, unless there is sufficient space on the other side of the railroad or rail transit crossing to accommodate the vehicle driven or there is sufficient undercarriage clearance to cross the intersection without obstructing the through passage of a railway vehicle, including, but not limited to, a train, trolley, or city transit vehicle.

This bill would make technical, substantive changes in the organization of these provisions and make a conforming change to a related provision.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

SECTION 1. Section 1803.5 of the Vehicle Code is amended to read:

1803.5. ~~(a) In accordance with Section 41501 or 42005, the clerk of a court or hearing officer,~~ when a person who receives a notice to appear at a court or board proceeding for a violation of any statute relating to the safe operation of vehicles is granted a continuance of the proceeding in consideration for attendance at a school for traffic violators, a licensed driving school, or any other court-approved program of driving instruction, ~~and which results in a dismissal of the complaint~~ *traffic violator school conviction* in consideration for that attendance, ~~the clerk of a court or hearing officer~~ shall prepare an abstract of the record of the court or board proceeding, certify the abstract to be true and correct, and cause the abstract to be forwarded to the department at its office at Sacramento within 10 days after the ~~complaint is dismissed~~ *traffic violator school conviction is issued*.

~~(b) This section shall become operative on September 20, 2005.~~

SEC. 2. Section 1808.7 of the Vehicle Code is amended to read:

1808.7. (a) The record of the department relating to the first proceeding and ~~dismissal~~ *traffic violator school conviction* under Section 1803.5 in any 18-month period for participation by a person in a licensed school for traffic violators, a licensed driving school, or any other court-approved program of driving instruction, is confidential, shall not be disclosed to any person, except a court, and shall be used only for statistical purposes by the department.

(b) *The record under subdivision (a) is not confidential if either of the following applies:*

(1) *The person holds a Class A, Class B, or commercial Class C driver's license.*

(2) *The person is operating a commercial motor vehicle as defined in subdivision (b) of Section 15210.*

SEC. 3. Section 13353.2 of the Vehicle Code is amended to read:

13353.2. (a) The department shall immediately suspend the privilege of a person to operate a motor vehicle for any one of the following reasons:

1 (1) The person was driving a motor vehicle when the person  
2 had 0.08 percent or more, by weight, of alcohol in his or her blood.

3 (2) The person was under 21 years of age and had a  
4 blood-alcohol concentration of 0.01 percent or greater, as measured  
5 by a preliminary alcohol screening test, or other chemical test.

6 (3) The person was driving a vehicle that requires a commercial  
7 driver's license when the person had 0.04 percent or more, by  
8 weight, of alcohol in his or her blood.

9 (4) The person was driving a motor vehicle when both of the  
10 following applied:

11 (A) The person was on probation for a violation of Section  
12 23152 or 23153.

13 (B) The person had 0.01 percent or more, by weight, of alcohol  
14 in his or her blood, as measured by a preliminary alcohol screening  
15 test or other chemical test.

16 (b) The notice of the order of suspension under this section shall  
17 be served on the person by a peace officer pursuant to Section  
18 13382 or 13388. The notice of the order of suspension shall be on  
19 a form provided by the department. If the notice of the order of  
20 suspension has not been served upon the person by the peace officer  
21 pursuant to Section 13382 or 13388, upon the receipt of the report  
22 of a peace officer submitted pursuant to Section 13380, the  
23 department shall mail written notice of the order of the suspension  
24 to the person at the last known address shown on the department's  
25 records and, if the address of the person provided by the peace  
26 officer's report differs from the address of record, to that address.

27 (c) The notice of the order of suspension shall specify clearly  
28 the reason and statutory grounds for the suspension, the effective  
29 date of the suspension, the right of the person to request an  
30 administrative hearing, the procedure for requesting an  
31 administrative hearing, and the date by which a request for an  
32 administrative hearing shall be made in order to receive a  
33 determination prior to the effective date of the suspension.

34 (d) The department shall make a determination of the facts in  
35 subdivision (a) on the basis of the report of a peace officer  
36 submitted pursuant to Section 13380. The determination of the  
37 facts, after administrative review pursuant to Section 13557, by  
38 the department is final, unless an administrative hearing is held  
39 pursuant to Section 13558 and any judicial review of the

1 administrative determination after the hearing pursuant to Section  
2 13559 is final.

3 (e) (I) The determination of the facts in subdivision (a) is a  
4 civil matter that is independent of the determination of the person's  
5 guilt or innocence, shall have no collateral estoppel effect on a  
6 subsequent criminal prosecution, and shall not preclude the  
7 litigation of the same or similar facts in the criminal proceeding.  
8 If a person is acquitted of criminal charges relating to a  
9 determination of facts under subdivision (a), or if the person's  
10 driver's license was suspended pursuant to Section 13388 and the  
11 department finds no basis for a suspension pursuant to that section,  
12 the department shall immediately reinstate the person's privilege  
13 to operate a motor vehicle if the department has suspended it  
14 administratively pursuant to subdivision (a), and the department  
15 shall return or reissue for the remaining term any driver's license  
16 that has been taken from the person pursuant to Section 13382 or  
17 otherwise. ~~Notwithstanding, unless the person (A) was operating~~  
18 *a commercial vehicle, as defined in Section 15210, at the time of*  
19 *the stop or (B) held a commercial driver's license at the time of*  
20 *the stop, regardless of whether the vehicle operated at the time of*  
21 *the stop was a commercial vehicle, as defined in Section 15210.*

22 (2) *Notwithstanding* subdivision (b) of Section 13558, if criminal  
23 charges under Section 23140, 23152, or 23153 are not filed by the  
24 district attorney because of a lack of evidence, or if those charges  
25 are filed but are subsequently dismissed by the court because of  
26 an insufficiency of evidence, the person has a renewed right to  
27 request an administrative hearing before the department. The  
28 request for a hearing shall be made within one year from the date  
29 of arrest.

30 (f) The department shall furnish a form that requires a detailed  
31 explanation specifying which evidence was defective or lacking  
32 and detailing why that evidence was defective or lacking. The form  
33 shall be made available to the person to provide to the district  
34 attorney. The department shall hold an administrative hearing, and  
35 the hearing officer shall consider the reasons for the failure to  
36 prosecute given by the district attorney on the form provided by  
37 the department. If applicable, the hearing officer shall consider  
38 the reasons stated on the record by a judge who dismisses the  
39 charges. A fee shall not be imposed pursuant to Section 14905 for  
40 the return or reissuing of a driver's license pursuant to this

1 subdivision. The disposition of a suspension action under this  
2 section does not affect an action to suspend or revoke the person's  
3 privilege to operate a motor vehicle under another provision of  
4 this code, including, but not limited to, Section 13352 or 13353,  
5 or Chapter 3 (commencing with Section 13800).

6 SEC. 4. Section 15200 of the Vehicle Code is amended to read:

7 15200. It is the intent of the Legislature, in enacting this  
8 chapter, to adopt those standards required of drivers by the Federal  
9 ~~Highway~~ *Motor Carrier Safety Administration of the United States*  
10 Department of Transportation, as set forth in the ~~Commercial~~  
11 ~~Motor Vehicle Safety Act of 1986 (Title XII of P.L. 99-570)~~  
12 *federal Motor Carrier Safety Improvement Act of 1999 (Public*  
13 *Law 106-159)* and to reduce or prevent commercial motor vehicle  
14 accidents, fatalities, and injuries by permitting drivers to hold only  
15 one license, disqualifying drivers for certain criminal offenses and  
16 serious traffic violations, and strengthening licensing and testing  
17 standards. This act is a remedial law and shall be liberally construed  
18 to promote the public health, safety and welfare. To the extent that  
19 this chapter conflicts with general driver licensing provisions, this  
20 chapter shall prevail. Where this chapter is silent, the general driver  
21 licensing provisions shall apply. It is the further intent of the  
22 Legislature that this program be fee supported, and that the  
23 department fully recoup its costs within four years of the program's  
24 enactment.

25 SEC. 5. Section 15300 of the Vehicle Code is amended to read:

26 15300. (a) ~~A driver of a commercial motor vehicle may~~ *shall*  
27 not operate a commercial motor vehicle for a period of one year  
28 if the driver is convicted of a first violation of any of the following:

29 (1) Subdivision (a), (b), or (c) of Section 23152 while operating  
30 a motor vehicle.

31 (2) Subdivision (d) of Section 23152.

32 (3) Subdivision (a) or (b) of Section 23153 while operating a  
33 motor vehicle.

34 (4) Subdivision (d) of Section 23153.

35 (5) Leaving the scene of an accident involving a motor vehicle  
36 operated by the driver.

37 (6) Using a motor vehicle to commit a felony, other than a felony  
38 described in Section 15304.

39 (7) Driving a commercial motor vehicle when the driver's  
40 commercial driver's license is revoked, suspended, or canceled

1 based on the driver's operation of a commercial motor vehicle or  
2 when the driver is disqualified from operating a commercial motor  
3 vehicle based on the driver's operation of a commercial motor  
4 vehicle.

5 (8) Causing a fatality involving conduct defined pursuant to  
6 Section 191.5 of the Penal Code or subdivision (c) of Section 192  
7 of the Penal Code.

8 (9) While operating a motor vehicle, refuses to submit to, or  
9 fails to complete, a chemical test or tests in violation of Section  
10 23612.

11 (10) A violation of Section 2800.1, 2800.2, or 2800.3 that  
12 involves a commercial motor vehicle.

13 (b) If a violation listed in subdivision (a), or a violation listed  
14 in paragraph (2) of subdivision (a) of Section 13350 or Section  
15 13352 or 13357, occurred while transporting a hazardous material,  
16 the period specified in subdivision (a) shall be three years.

17 SEC. 6. Section 15302 of the Vehicle Code is amended to read:

18 15302. A driver of a commercial motor vehicle ~~may~~ *shall* not  
19 operate a commercial motor vehicle for the rest of his or her life  
20 if convicted of more than one violation of any of the following:

21 (a) Subdivision (a), (b), or (c) of Section 23152 while operating  
22 a motor vehicle.

23 (b) Subdivision (d) of Section 23152.

24 (c) Subdivision (a) or (b) of Section 23153 while operating a  
25 motor vehicle.

26 (d) Subdivision (d) of Section 23153.

27 (e) Leaving the scene of an accident involving a motor vehicle  
28 operated by the driver.

29 (f) Using a motor vehicle to commit a felony, other than a felony  
30 described in Section 15304.

31 (g) Driving a commercial motor vehicle when the driver's  
32 commercial driver's license is revoked, suspended, or canceled  
33 based on the driver's operation of a commercial motor vehicle or  
34 when the driver is disqualified from operating a commercial motor  
35 vehicle based on the driver's operation of a commercial motor  
36 vehicle.

37 (h) Causing a fatality involving conduct defined pursuant to  
38 Section 191.5 of the Penal Code or in subdivision (c) of Section  
39 192 of the Penal Code.



1 (i) While operating a motor vehicle, refuses to submit to, or  
2 fails to complete, a chemical test or tests in violation of Section  
3 23612.

4 (j) A violation of Section 2800.1, 2800.2, or 2800.3 that involves  
5 a commercial motor vehicle.

6 (k) Any combination of the above violations or a violation listed  
7 in paragraph (2) of subdivision (a) of Section 13350 or Section  
8 13352 or 13357 that occurred while transporting a hazardous  
9 material.

10 SEC. 7. Section 15311 of the Vehicle Code is amended to read:

11 15311. (a) A driver ~~may~~ *shall* not operate a commercial motor  
12 vehicle for a period of ~~90~~ *180* days if the person is convicted of a  
13 first violation of an out-of-service order under subdivision (b), (c),  
14 or (d) of Section 2800.

15 (b) A driver ~~may~~ *shall* not operate a commercial motor vehicle  
16 for a period of ~~180 days~~ *two years* if the person is convicted of  
17 violating an out-of-service order under subdivision (b), (c), or (d)  
18 of Section 2800 while transporting hazardous materials required  
19 to be placarded or while operating a vehicle designed to transport  
20 16 or more passengers, including the driver.

21 (c) A driver ~~may~~ *shall* not operate a commercial motor vehicle  
22 for a period of ~~one year~~ *two years* if the person is convicted of a  
23 second violation of an out-of-service order under subdivision (b),  
24 (c), or (d) of Section 2800 during any 10-year period, arising from  
25 separate incidents.

26 (d) A driver ~~may~~ *shall* not operate a commercial motor vehicle  
27 for a period of three years if the person is convicted of a second  
28 violation of an out-of-service order under subdivision (b), (c), or  
29 (d) of Section 2800 while transporting hazardous materials that  
30 are required to be placarded or while operating a vehicle designed  
31 to transport 16 or more passengers, including the driver.

32 (e) In addition to the disqualification period required in  
33 subdivision (a), (b), (c), or (d), a driver who is convicted of  
34 violating an out-of-service order under subdivision (b) of Section  
35 2800 is subject to a civil penalty of not less than ~~one thousand one~~  
36 ~~hundred dollars (\$1,100) nor more than two thousand seven~~  
37 ~~hundred fifty dollars (\$2,750)~~ *two thousand five hundred dollars*  
38 *(\$2,500) for a first conviction, and a civil penalty of five thousand*  
39 *dollars (\$5,000) for a second or subsequent conviction.*

1 (f) A driver ~~may~~ *shall* not operate a commercial motor vehicle  
2 for a period of three years if the person is convicted of a third or  
3 subsequent violation of an out-of-service order under subdivision  
4 (b), (c), or (d) of Section 2800 during any 10-year period, arising  
5 from separate incidents.

6 ~~(g) This section shall become operative on September 20, 2005.~~

7 SEC. 8. Section 15311.1 of the Vehicle Code is amended to  
8 read:

9 15311.1. ~~(a)~~ An employer that knowingly allows or requires  
10 an employee to operate a commercial motor vehicle in violation  
11 of an out-of-service order is, upon conviction, subject to a civil  
12 penalty of not less than two thousand seven hundred fifty dollars  
13 (\$2,750) nor more than ~~eleven thousand dollars (\$11,000)~~  
14 *twenty-five thousand dollars (\$25,000)*.

15 ~~(b) This section shall become operative on September 20, 2005.~~

16 SEC. 9. Section 15312 of the Vehicle Code is amended to read:

17 15312. ~~(a)~~ A driver may not operate a commercial motor  
18 vehicle for the following periods:

19 ~~(1)~~

20 (a) Not less than 60 days if that person is convicted of a violation  
21 of subdivision (a) of Section 2800, or Section 21462, 22451, or  
22 22452, or subdivision (c) or (d) of Section 22526, involving a  
23 commercial motor vehicle and the violation occurred at a  
24 railroad-highway crossing.

25 ~~(2)~~

26 (b) Not less than 120 days if that person is convicted of a  
27 violation of subdivision (a) of Section 2800, or Section 21462,  
28 22451, or 22452, or subdivision (c) or (d) of Section 22526,  
29 involving a commercial motor vehicle, and that violation occurred  
30 at a railroad-highway crossing, during any three-year period of a  
31 separate, prior offense of a railroad-highway grade crossing  
32 violation, that resulted in a conviction.

33 ~~(3)~~

34 (c) Not less than one year if that person is convicted of a  
35 violation of subdivision (a) of Section 2800, or Section 21462,  
36 22451, or 22452, or subdivision (c) or (d) of Section 22526,  
37 involving a commercial motor vehicle, and that violation occurred  
38 at a railroad-highway crossing, at a railroad-highway grade  
39 crossing, during any three-year period of two or more prior offenses

1 of a railroad-highway grade crossing violation, that resulted in  
2 convictions.

3 ~~(b) This section shall become operative on September 20, 2005.~~

4 SEC. 10. Section 22526 of the Vehicle Code is amended to  
5 read:

6 22526. (a) Notwithstanding any official traffic control signal  
7 indication to proceed, a driver of a vehicle shall not enter an  
8 intersection or marked crosswalk unless there is sufficient space  
9 on the other side of the intersection or marked crosswalk to  
10 accommodate the vehicle driven without obstructing the through  
11 passage of vehicles from either side.

12 (b) A driver of a vehicle which is making a turn at an  
13 intersection who is facing a steady circular yellow or yellow arrow  
14 signal shall not enter the intersection or marked crosswalk unless  
15 there is sufficient space on the other side of the intersection or  
16 marked crosswalk to accommodate the vehicle driven without  
17 obstructing the through passage of vehicles from either side.

18 (c) A driver of a vehicle shall not enter a railroad or rail transit  
19 crossing, notwithstanding any official traffic control device or  
20 signal indication to proceed, ~~unless there is sufficient space on the~~  
21 ~~other side of the railroad or rail transit crossing to accommodate~~  
22 ~~the vehicle driven or there is sufficient undercarriage clearance to~~  
23 cross the intersection without obstructing the through passage of  
24 a railway vehicle, including, but not limited to, a train, trolley, or  
25 city transit vehicle.

26 *(d) A driver of a vehicle shall not enter a railroad or rail transit*  
27 *crossing, notwithstanding any official traffic control device or*  
28 *signal indication to proceed, unless there is sufficient space on*  
29 *the other side of the railroad or rail transit crossing to*  
30 *accommodate the vehicle driven and any railway vehicle, including,*  
31 *but not limited to, a train, trolley, or city transit vehicle.*

32 ~~(d)~~

33 (e) A local authority may post appropriate signs at the entrance  
34 to intersections indicating the prohibition in subdivisions (a), (b),  
35 and (c).

36 ~~(e)~~

37 (f) A violation of this section is not a violation of a law relating  
38 to the safe operation of vehicles and is the following:

(1) A stopping violation when a notice to appear has been issued by a peace officer described in Section 830.1, 830.2, or 830.33 of the Penal Code.

(2) A parking violation when a notice of parking violation is issued by a person, other than a peace officer described in paragraph (1), who is authorized to enforce parking statutes and regulations.

(f)

(g) This section shall be known and may be cited as the Anti-Gridlock Act of 1987.

SEC. 11. Section 41501 of the Vehicle Code is amended to read:

41501. (a) The court may order a continuance of a proceeding against a person, who receives a notice to appear in court for a violation of a statute relating to the safe operation of a vehicle, in consideration for attendance at a licensed school for traffic violators, a licensed driving school, or any other court-approved program of driving instruction, and, after that attendance and pursuant to Section 1803.5 or 42005, the court may ~~dismiss the complaint~~ *issue a traffic violator school conviction* under the following conditions:

(1) If the offense is alleged to have been committed within 12 months of another offense that was ~~dismissed~~ *issued a traffic violator school conviction* under this section, the court may order the continuance and, after the attendance, ~~dismiss the complaint~~ *issue a traffic violator school conviction*. The court may order attendance at a licensed school for traffic violators that offers a program of at least 12 hours of instruction.

(2) If the offense is not alleged to have occurred within 18 months of another offense that was ~~dismissed~~ *issued a traffic violator school conviction* under this section, the court may order the continuance and, after the attendance, ~~dismiss the complaint~~ *issue a traffic violator school conviction* if the attendance is at any of the types of schools or programs that the court directed pursuant to Section 42005 at the time of ordering the continuance.

(b) Subdivision (a) does not apply to a person who receives a notice to appear as to, or is otherwise charged with, a violation of an offense described in subdivisions (a) to (e), inclusive, of Section 12810.

1     SEC. 12. No reimbursement is required by this act pursuant to  
2     Section 6 of Article XIII B of the California Constitution because  
3     the only costs that may be incurred by a local agency or school  
4     district will be incurred because this act creates a new crime or  
5     infraction, eliminates a crime or infraction, or changes the penalty  
6     for a crime or infraction, within the meaning of Section 17556 of  
7     the Government Code, or changes the definition of a crime within  
8     the meaning of Section 6 of Article XIII B of the California  
9     Constitution.

O